IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1535 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS
and
Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? :

NARAN LAXMAN

Versus

STATE OF GUJARAT

Appearance:

1. First Appeal No. 1535 of 1980

MR BH UPADHYAY for Petitioner No. 1

MR. R.M. CHAUHAN, AGP, for Respondent No. 1

CORAM : MR.JUSTICE KSHITIJ R.VYAS
and
MR.JUSTICE K.M.MEHTA

Date of decision: 17/07/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE K.M.MEHTA)

1. Shri Naran Laxman as vahivatkarta of Kanji Laxman and others-appellants - original applicants have filed this appeal under Section 54 of the Land Acquisition Act against judgement and award dated 30.4.1980 passed by the Assistant Judge, Bhavnagar, in Land Reference Case No. 3 of 1977. The Reference Court by his impugned judgement has awarded Rs. 4/- per sq. yard of the land under acquisition and also awarded further amount of Rs. 3000/as amount of compensation on the ground of severance. The Reference Court partly allowed the appeal and awarded excess amount of Rs. 68,275.10 ps. (i.e. Rs. 47,674/- as enhanced compensation for the acquired land, Rs. 3,000/- for severance and Rs. 7,601.10 ps. as 15% solatium). The Reference Court was pleased to dismiss rest of the claim of the claimants. The Reference Court judge has awarded interest at the rate of 4.5%.

2. The facts giving rise to this appeal are as under:

2.1 There is a land bearing survey No. 251 admeasuring 9 acres 34 gunthas (46,647 sq. yards) situated at village Chitra of Bhavnagar Taluka of Bhavnagar District. The said land having been acquired for the purpose of Western Water Works Scheme under the proceedings started under the Land Acquisition Act by the Deputy Collector of Bhavnagar, Sub-Division, Bhavnagar. Notification under Section 4 of the Act was issued on 16.6.1970. Notification under Section 6 of the Act was duly published on 14.10.1971 in the Government Gazette. Notice under Section 4(1) and 9 of the Act were duly published and served on the applicant. After issuance of the above Notifications public notice as well as individual notice were published and served. The claimant advanced his claim before the Land Acquisition Officer at the rate of Rs. 25,000/- per Acre i.e. Rs. 5,151.40 ps. per sq. yard. The claimant has also claimed Rs. 17,250/- for severance. Thus, in all the claimant has claimed compensation of Rs. 3,00,667.50 ps. The Land Acquisition Officer considered the evidence on record and ultimately by his award dated 10.4.1974 was pleased to award Rs. 3/- per sq. ft. The land Acquisition Officer did not give any amounts for other claims of the claimant.

2.2 After the award the claimants filed an application under Section 18 of the Land Acquisition Act before the Land Acquisition Officer, Bhavnagar, for making reference to the District Court. The claimant

adduced oral evidence as well as documentary evidence in support of the claim that the claimant is entitled to Rs. 5.15 ps. per sq. yard and also claimed compensation for severance of Rs. 17,250/- with solatium. Thus the land Acquisition Officer awarded in all a sum of Rs. 1,64,475.30 ps.

2.3 The Reference Court after considering the oral as well as documentary evidence produced before him has awarded Rs. 4/- per sq. yard for the land under acquisition and the same will reflect adequate amount of compensation to which the applicant will be entitled to. The Reference Court has also awarded Rs. 3000/- on the ground of severance and also granted 15% solatium.

2.4 We have gone through the evidence on record in this behalf. The claimant has produced oral evidence of Savajibhai Ravjibhai vide exh. 26 who was the Secretary of Nirbhay Co-operative Housing Society Limited. He has tried to prove registered Sale Deed regarding Survey No. 253. According to him the said land was purchased by the society at the rate of Rs. 6 per sq. yard by registered Sale Deed dated 13.1.1970. The other witness was Bhikhalal Shamjibhai Exh. 29. He happens to be father of Jagdish. He has also purchased land of plot bearing No. 33 out of Survey No. 253 of the sim of village Chitra in the name of his son Jagdish by sale deed dated 15.10.1970. He has produced sale deed at Exh. 30.

2.5 Another witness Bhikabhai Muljibhai is a purchaser of land of Survey No. 260, 261, and 262 of the sim of village Chitra. He has produced registered sale deed dated 7.7.1972. He has received Rs.. 7500/- for the same.

2.6 Claimants also produced evidence of Prabhudas Trikanji. He has also stated that he has a plot which was purchased by his father Trikamjibhai on 7.7.1972 for Rs. 7,500/-. He has also produced sale deed at Exh. 32.

2.7 Another witness Krishnakumar Premraji Dholakia who also happen to be member of housing society. He stated that the society purchased eight plots out of Survey No. 278 on 22.4.1968. He has stated that the rate of the said land was Rs. 4/- per sq. yard which was on 10.6.1965. He has also produced sale deed at Exh. 39.

2.8 The next witness Ghanshyam Pranjivan Bhatt at Exh. 40 who was working as Secretary of Jubilee

Co-operative Housing Society Limited has produced sale deed dated 25.9.1968 of survey No. 212 at exh. 41. He has admitted that the land in question is acquired as uneven land and at the time of document Exh. 41 the land of Survey No.212 happened to be properly levelled and the same was also plotted.

2.9 The next witness Madhubhai Shivubha is a purchaser of plot No. 74 admeasuring 400 sq. yards out of Survey Nos. 260, 261 and 262 from Ayojit Desai Nagar in the sim of village Chitra. He has produced sale deed dated 9.1.1969. He has stated the rate of Rs. 8/- per sq. yard.

2.10 The another witness is Ramniklal Kantilal. He has produced sale deed at Exh. 41 dated 25.9.1968. The said sale deed contained plot Nos. 17, 18,20,26 and 27 out of the land of Survey No. 212. He has stated that the rate in question is Rs. 5.29 ps. per sq. yard.

2.11 The next witness is Harkantbhai Dinkerrai Desai at Exh. 49. He has produced sale deed dated 9.1.1969 in connection with survey No. 260, 261 and 262. He has also give price regarding various plots sold in this behalf.

2.12 The next witness is Nanjibhai Laxmanbhai at Exh. 50. He is doing vahivat of the land which is under acquisition. He has stated that after acquisition, the portion of land which has remained out of Survey number 251 is not sufficient to carry on agricultural operations profitably in it and so the well which has remained with us cannot be made use of satisfactorily. He has tried to support the claim of Rs. 5.25 ps. per sq. yard. He has also tried to produce photograph.

2.13 The learned counsel has relied on various sale instances. The particulars relating to such sale instance are given below:

(i) By Sale Deed dated 22.4.1968 at Exh. 39 Mohmedbin Isabin and others sold eight plots out of Survey No. 278 admeasuring 4023 sq. yards for a consideration of Rs. 28,161/- at the rate of Rs. 7/- per sq. yard to Rangyout Co-op. Housing Society.

(ii) By Sale Deed dated 25.9.1968 at Exh. 41 Kantilal Bhavandas Kachhiya & Ors. sold five plots out of Survey No. 212 admeasuring 2356 sq. yards for a consideration of Rs. 30,463.08 ps. at the rate

of Rs. 12.93 to Jubilee Co-operative Housing Society.

(iii) By Sale Deed dated 9.1.1969 at Exh. 46 Harkantrai Dinkerai Desai sold plot No. 74 out of Survey Nos. 260, 261 & 262 admeasuring 400 sq. yards for a consideration of Rs. 3,200/- at the rate of Rs. 8/- per sq. yard to Madhubhai Shivubhai.

(iv) By Sale Deed dated 13.1.1970 at Exh. 28 Swastik Corporation sold 15 plots out of Survey No. 253 admeasuring 6646 for a consideration of Rs. 39,888/- at the rate of Rs. 6/- per sq yard to Nirbhai Co-op. Housing Society.

(v) By Sale Deed dated 15.10.1970 at Exh. 30 Jagdishkumar sold 33 plots out of survey No. 253 admeasuring 400 sq. yard for a consideration of Rs. 2,400/- at the rate of Rs. 6/- per sq. yard to Nirbhai Co-op. Housing Society.

(vi) By Sale Deed dated 7.7.1972 at Exh. 32 Bhikabhai Muljibhai I others sold one plot admeasuring 603 sq. yards for a consideration of Rs. 7,500/- at the rate of Rs. 12.44 to Sutar Trikam Zaver.

3. The opponents have produced the following evidence.

3.1 Bhanushanker Mulshanker Joshi at Exh. 56is Talati-cum-Mantri at Chitra. He has produced original gam namuna No. VI Hakpatrak and the relevant extracts in respect of entries at serial numbers 859, 901, 922, 945, 946, 1849 and 1899.

3.2 The other witness is Chandrakant Nanalal Vyas at Exh. 66. He is purchaser of plot No. 34 for which he has paid Rs. 2000/-. He has produced sale deed dated 6.7.1970.

4. From the record it appears that the situation of the acquired land is mentioned in the award as follows:

4.1 Aportion out of field bearing survey Number 251 of the sim of village Chitra is the land under acquisition. The said land is situated on Kutcha road between Vadva Bhavnagar to Fariadka. There is an entry for the said land through the said kutcha road. Thus the said land abuts on the Kutcha road. The level of the

land is not plain. It has a slope on the western side. As the acquired land is of higher level, the same being useful for the purpose of filtration plant. Accordingly, it appears to have been selected for that purpose. To the est of the acquired land there is a plotted land for non-agricultural use. On the western side, there is a Fulsar-Bhavnagar road and on the southern side there is remaining land of survey No. 251. It is also made out from the record that the acquired land is at a distance of about one kilometer in the interior to the south of Bhavnagar-Rajkot road. Moreover, the same has already been included in the Master Plan.

4.1A We have considered the provisions of the Land Acquisition Act and principle regarding determination of market value of land contained in Section 23 of the Land Acquisition Act. The object of the enquiry in reference under Section 18 is to bring on record the price which the land under acquisition was capable of fetching in the open market as on the date of the notification. The relative situation of the acquired land which is the subject of sale transaction, the nature of the land, its suitability, nature of the use to which the lands are put to on the date of the notification, income derived or derivable from or any other special distinctive feature which the land is possessed of and the sale transactions in respect of lands covered by the same notification are all relevant factors to be taken into consideration in determining the market value.

4.1B When a large extent of land is acquired, determination of compensation on the foot of a cent, square yard or square foot is a wrong principle. The principle of fixation on acreage basis would be the correct principle. The Hon'ble Supreme Court in the case of P. RAM REDDY VS. LAND ACQUISITION OFFICER, HYDERABAD URBAN DEVELOPMENT AUTHORITY reported in (1995) 2 SCC 305 in para 17 has observed as under:-

"It is a matter of common knowledge that the large extents of lands if are to be sold, they cannot fetch the value which may be fetched by sale of small extents of land. It is for that reason the courts do not ordinarily accept the value fetched by small extents as the basis for determination of the value of large extents of acquired lands. In fact, where the small extent of land sold is insignificant when compared with large extent of land acquired, the market value of large extent of acquired lands shall not be

> determined on the basis of value fetched by sale of infinitesimally small extent of land. But, in exceptional cases when small extent of land sold for a price as compared with the acquired large extent of land, the market value of which is required to be determined is not so insignificant, the court depending upon the possibility of the large extent of land of the claimant being sold as a small extent of land as that already sold for a price the market value of the large extent could be fixed on the basis of the price fetched by sale of small extent. Even then, how far the price fetched by sale of small extents can be made the basis for determining the market value of large extents must necessarily depend on the fact situation including that as to why the purchase was made, in each case, which has come on its record."

4.1C Earlier we have considered the sale instances produced by the claimants in this behalf. We have also considered the award passed by the Land Acquisition Officer where he has also considered the other instances. In this case the land which is acquired is 9 acres 34 gunthas namely 46,647 sq. yards situated at village Chitra of Bhavnagar taluka of Bhavnagar District whereas the sale instances produced by the claimants are of land admeasuring 4023 sq. yards sold for a consideration of Rs. 28,161/- at the rate of Rs. 7/- per sq. yard, land admeasuring 2356 sq. yards for a consideration of Rs. 30,463.08 ps. at the rate of Rs. 12.93 per sq. yard.

4.2 From the sale instances and the oral evidence produced by the claimants, it appears that the price of the plotted land is ranging from Rs. 5/- to Rs. 12/and more per sq. yard during the period from 1968 to 1972. The relevant date is 16.6.1970, the date on which Notification under Section 4 issued. The fact that there have been sales in respect of plotted lands in the locality of the acquired land is borne out from Schedule "C" containing sale instances as considered by the Land Acquisition Officer. The same also goes to show that the sale transactions in respect of agricultural lands are not only negligible but practically nil in the said locality. The transactions of plotted land out of Survey No. 253 are at serial Nos. 7, 12, 13 and 14 and serial Nos. 7, 12 and 13 refer to the sales in favour of Nirbhay Co-operative Housing Limited at the rate of Rs. 6/- per sq. yard while serial No. 13 is in favour of Yakub Haji Musa at the rate of Rs. 3.13 paise. The said transaction is for 476 sq. yard of land for Rs. 1500/on

13.3.1970 between Lallubhai Thakarshi as owner of the land and Yakub Haji Musa as purchaser.

4.3 We have considered the principle laid down by the Hon'ble Supreme Court in the case of P. RAM REDDY (supra). After considering the price of land it is no doubt true that the applicants have produced sale instances ranging from maximum price of Rs. 12.93 paise per sq. yard to minimum price at Rs. 6/- per sq. yard and Rs. 3.13. paise per sq. yard. However, if we look the measurement of the land in question, the measurement is very small compared to the land which is under acquisition.

4.4 In view of the aforesaid circumstances we are of the view that the claimants are justified in getting Rs. 5.15 paise per sq. yard as the amount of compensation for the land in question. In view of the same, the claim of the claimant is legal and proper. It may be noted that though the land was originally agricultural land but certain area was developed and there was building potentiality of the land under acquisition which is material aspect to be taken into account. The building activity has started and it had developed and continued from year to year and there is sufficient material on record on the point. The valuation of the lands increased day by day and that aspect is also borne out from the material on record.

4.5 It may be noted that the land under acquisition was a rock land. However, as regards suitability of the land in question, the land was acquired for the Water Works Filtration Plant. From the evidence by the opponents, i.e. Government the land was suitable for the purpose of acquisition for filtration plant. In view of the same we have to ascertain the potentiality and suitability of the land in question. In view of the same, even though the land is rock land, the same is not conducive to the applicant because the land under acquisition for filtration plant was a material factor which is in favour of the applicant.

4.6 We also consider the fact that there are evidences on record that there are various housing societies in the locality of the acquired land and building activity is going on with reference to the photographs, marks 13/9, 10, 11, 13 and 14. There are houses and several societies which are situated in the land in question.

4.7 There is also road of the width of 30 ft. and situated adjacent to the northern boundary of the field

and the said roads run east-west and the same get reflected as per photograph mark 13/7 produced by the applicant. The land under acquisition is about at a distance of half kilometer and not one kilometer. Nareshwar society is the nearest Housing society to the acquired land.

4.8 It may be noted that after appreciating the evidence on record including the value of the land the Reference Court has observed that the claim made by the applicant cannot be said to be highly improper and excessive. The claimant claimed Rs. 4.25 per sq. yard in respect of the lands which we have referred which the Reference Court has referred to in this behalf. The Reference Court in his operative order awarded Rs. 4/- per sq. yard. The Reference Court has not given any reason while arriving at Rs. 4/- per sq. yard.

4.9 In our considered view looking to the situation of the land and the building activity going on in the vicinity of Nareshwar Society, sale instances produced by the applicant, the price reflected from Rs. 6/- to Rs. 12/per sq. yard are in favour of the land under acquisition. In view of the same, we see no reason to come to the conclusion that the rate claimed at Rs. 5.25 is either improper or excessive. On the other hand we are of the view that the rate claimed by the claimant at Rs. 5.25 per sq. is absolutely legal and valid looking to the situation of land in question.

4.10 As regards amount of Rs. 3000/- we have also gone through the reasoning of the Reference Court. Government has not filed appeal. Therefore, we do not interfere with the said finding of the Reference Court.

4.11 It may be noted that the claimant has in all claimed a sum of Rs. 3,00,667.50 paise as compensation. The Land Acquisition Officer has awarded at the rate of Rs. 3/- per sq. yard Rs. 1,64,475.30 paise. As the claimant did not accept the compensation, he submitted application before the Land Acquisition Officer for making reference under Section 18 of the Act. Before the court he claimed Rs. 5.25 per sq. yard for the acquired land at Rs. 2,83,417.50 paise with solatium and Rs. 1,64,475.30 ps. was awarded by the Land Acquisition Officer for the acquired land, the claimant has claimed Rs. 1,35,192.20 paise as compensation including solatium before the Reference Court. The Reference Court has partly allowed the reference and awarded an amount of Rs. 58,275.10 paise (Rs. 47,674/- enhanced compensation for the acquired land + Rs. 3000/- for severance + Rs.

7,601.10 paise as 15% solatium).

5. In view of the same, the present appeal is filed for balance amount of Rs. 77,870/-. The appeal is allowed with interest at the rate of 4.5% from the date of reference till realisation. The State is directed to deposit the said amount before the Reference Court within 12 (twelve) weeks from today.

(K.R. VYAS, J)

(K.M. MEHTA, J)
(pkn)